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OFFICE OF PETITIONS

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| In re Application of | : | |
| Fusao Shimizu | : | |
| Application No. 09/863,447 | : | DECISION DISMISSING |
| Filed: 24 May, 2001 | : | PETITION |
| Attorney's Docket No. 109589 | : | |

This is a decision on the petition filed on 30 July, 2001, to accord the above-identified application a filing date of 24 May, 2001, with Figure 9 as a part of the original disclosure.

The petition is **DISMISSED**.

On 24 May, 2001, the application was filed. On 23 July, 2001, however, Initial Patent Examination Division mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" stating that the application had been accorded a filing date of 24 May, 2001, but that Figure 9 described in the specification appeared to have been omitted from the application. A two (2)-month period for reply was set.

In response, on 30 July, 2001, the present petition was filed, accompanied by one (1) sheet of drawings containing Figure 9. Petitioners argue that Figure 9 was filed with the other application papers deposited in the USPTO on 24 May, 2001. In support, petitioners supplied on 30 July, 2001, a copy of a postcard receipt bearing a USPTO Office date stamp of 24 May, 2001, and the above-identified application number and itemizing the filing of 12 sheets of drawings and Figures 1-13B.

A review of the record reveals that 12 sheets of drawings containing Figures 1-13B are located in the application file. Figure 9, however, cannot be located among the application papers

deposited on 24 May, 2001. Petitioners concede that the postcard receipt itemized the filing of 12 sheets of drawings, but assert that Figure 9 was nonetheless among the drawings filed in the Office on 24 May, 2001.

Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard (e.g. the number of pages of specification (including written description, claims and abstract) number of claims, number of sheets of drawings, number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.¹

Petitioners argument has been considered, but is not persuasive. The showing of record is that 12 sheets of drawings containing Figures 1-13B were received in the Office on 24 May, 2001, and petitioner's postcard receipt reflects that the Office received the items listed above. While the postcard itemizes the filing of 12 sheets of drawings containing Figures 1-13B, the postcard receipt does not itemize the filing of Figure 9. Absent a showing that Figure 9 was located within the 12 sheets of drawings received in the Office on 24 May, 2001, petitioners simply have no evidence that Figure 9 was located among the application papers received in the Office on that date.

Petitioner may submit Figure 9 in the form of a preliminary amendment. If Figure 9 is submitted as a preliminary amendment, it will be reviewed by the examiner for new matter.

As the petition resulted from applicant's filing error and not as a result of an error on the part of the Office, the petition fee will not be refunded.

¹MPEP 503.

The correspondence address has been corrected in accordance with the declaration filed with the application papers deposited on 24 May, 2001.

The application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 24 May, 2001, using the application papers filed on that date. The copy of Figure 9 supplied with the present petition will not be processed or examined, but will be retained in the application file.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood, at (703) 308-6918.


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